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115th AFFORDABLE HOUSING LLC v. WALTON

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R
---X
115th AFFORDABLE HOUSING LLC,

Petitioner,

Index No. 71124/2019

-against-

SHAWN WALTON,

DECISION/ORDER

Respondent.
---X

Present: Hon. Jack Stoller
Judge, Housing Court

115th Affordable Housing LLC, the petitioner in this proceeding ("Petitioner"), commenced this summary proceeding against Shawn Walton, the respondent in this proceeding ("Respondent"), seeking possession of 233 West 115th Street, Apt. 6A, New York, New York ("the subject premises") on the allegation of nonpayment of rent. Respondent interposed an answer with affirmative defenses of payment, inadequate rent demand, breach of the warranty of habitability, laches, and rent overcharge and counterclaims for breach of the warranty of habitability, an order to correct, a rent overcharge, and harassment. The Court held a trial of this matter on November 4, 2022, January 4, 2023, and March 31, 2023 and adjourned the matter for post-trial submissions to April 28, 2023.

The trial record

The petition in this matter, which the Court took judicial notice of, verified on October 18, 2019, alleged *inter alia* that the subject premises is subject to the Rent Stabilization Law, that the monthly rent is \$630.97, and that Respondent owed \$6,367.67 in rent arrears through September of 2019.

Petitioner submitted into evidence a two-year lease between the parties with a monthly rent of $630.97 commencing on October 1, 2014. Petitioner also submitted into evidence a stipulation dated May 30, 2018 in the matter 233 West 115th Holdings LLC v. Walton, #57094/2017 (Civ. Ct. N.Y. Co.)("the Stipulation"). The Stipulation provides, *inter alia*, that the rent arrears were $8,895.07 as of that date, that the rent of $630.97 was a preferential rent for Respondent that would be the basis for the monthly rental on subsequent renewal leases, and that Petitioner shall offer Respondent a renewal lease commencing on October 1, 2018. The Stipulation also granted Respondent a rent abatement and included a number of allegations about repairs.

Petitioner submitted into evidence a rent breakdown that showed, *inter alia*, a balance of $12,808.34 as of August of 2020, no payments of rent until September of 2021, a payment of $8,708.40 on October 5, 2021 from the Emergency Rent Assistance Program ("ERAP"),[1] 31 payments of $107.50 through August of 2022, and a payment of $365.56 on April 12, 2022.

Respondent testified on Petitioner's case that he does not recall whether he paid rent from November of 2018 through September of 2019 or after that; that he usually paid his rent by check when he paid rent; that he keeps records of his checks; that he does not recall whether he has checks with him right now; that some rent was paid by a certified check that his attorney has; that he would pay rent if his attorney so advised him, by certified check; and that he has records.

Petitioner moved to amend the pleadings to conform to the proof. Respondent cross-moved to amend his answer to add defense pursuant to the Tenant Safe Harbor Act ("TSHA"). The Court reserved decision.

[1] ERAP is codified at L. 2021, c. 56, Part BB, Subpart A, as amended by L. 2021, c. 417, Part A.

Respondent testified on his case that he moved into the subject premises in October of 2002; that paint is peeling from the entryway of the subject premises; that the hardwood floors are damaged in the entryway of the subject premises; that Petitioner did not complete repairs on the Stipulation; that the conditions in the Stipulation first appeared in 2014; that he wrote a letter to Petitioner at that time; that Petitioner did not respond to that letter; that there were access dates on the Stipulation; that he cannot remember what happened on the access dates; that he spoke to his attorney about repairs not being done; that he spoke to the super; that the super told him to call the office; that he called someone at the office named "Ms. Lopez," that "Ms. Lopez" did not return his calls; that the only action taken is when they end up in Court; that usually Petitioner enters into a court stipulation; that Petitioner often asks for multiple access dates even though he has already provided access; that Petitioner's counsel did not appear on an access date as stipulated in Court on January 22, 2020; that he provided access again; that Petitioner's counsel again did not appear; that the Department of Housing Preservation and Development of the City of New York ("HPD") inspected the subject premises twice as per Court order; that there was a hearing at DHCR; that he tried to discuss repairs but Petitioner's counsel made it difficult; that Petitioner had a lot of preconditions about what they were not going to do; that he thinks that Petitioner wants to frustrate him out of the subject premises; that he has made overtures and bent over backwards for Petitioner; that he filed an HP proceeding against Petitioner; that Petitioner defaulted twice; that nothing came of the HP proceedings; that Petitioner has brought holdover proceedings against Petitioner; that every time he comes to Court he feels defeated; that he feels like he is being raped and victimized by Petitioner; that he is tired, angry, and frustrated; that he does not want to continue to go through this anymore; that he has been frustrated because Petitioner's counsel has not agreed to settle the case; that there was never any attempt to resolve

this matter; that he has been diagnosed with an illness; that he had to go through a serious surgery; that his doctor recommended bed rest; that he is on medication; that he is on blood pressure medication; that he has high blood pressure; that his dosage was increased; that he has experienced nausea and dizziness; that he is sensitive to fumes from cleaning solutions; that he has to keep his windows up to have fresh air; that he was diagnosed earlier in 2022; that he was diagnosed with cancer; that he takes there are side effects from the medication that he takes; that he takes medication for cholesterol; that the side effects he experienced include light-headedness and sleep disruption; that in the past he was always willing and able to grant access on agreed-upon dates; that this year has been a struggle for him especially since he got his diagnosis and dealing with the change in his quality of life; that he is not the same person that he once was; that when he exposed to fumes and chemicals and odors it would be impossible for him to stay in an environment like that; that he told Petitioner of his inability to stay in the subject premises when repairs were going on; that in order for him to grant access, he would have to be relocated to a place where he could rest, have meals, and have internet access for his remote work; that he would grant access if he was accommodated as such; that there have been no changes; that he was diagnosed with cancer in February of 2022, same time that he first experienced high blood pressure; and that he first requested relocation in April of 2022.

Respondent submitted into evidence the photographs taken in September of October of 2022 of the following: the inside of the entryway of the subject premises, showing some peeling in walls and ceiling; kitchen floors, depicting a crack in a tile; hardwood floors in the living room/dining room area that are worn away; of a windowsill in living room; of a living room ceiling area where there are splotches of paint; a window that is off-track; peeling paint; and a rusty flushometer.

Respondent submitted into evidence a violation summary report ("VSR")[2] issued by HPD showing that HPD placed the following violations on July 5, 2022: "C" violations for mice and roaches, "B" violations for reglazing a tub, an electrical outlet, a kitchen light fixture, a flushometer, a splintered wood floor in a room, a smoke/carbon monoxide detector, and vinyl floor tiles in the kitchen, and "A" violations for grout around a tub, painting needed throughout, and closet doors off-track, and violations placed on August 21, 2020: "B" violations for a broken or defective surfaced foyer and internal room walls, a defective wood floor in foyer and internal room, a ceiling in a room, a flushometer, a broken kitchen light fixture, a smoke detector, and an electric outlet in a room, and an "A" violation for refitting an entrance door and internal door (collectively, "the Violations").[3]

Respondent testified that he had treatments for a malignancy; that he has slowed down; that he cannot move things; that he sleeps longer; that he has taken medications that had an impact on him with regard to sleeping, headaches, and nausea; that simple things like cleaning solution like bleach or detergent or dishwashing liquid exacerbated his conditions; and that he has to use soaps without fragrance because it makes him regurgitate.

Respondent testified on cross-examination that Petitioner has done nothing to commence the repairs; that all the allegations of repairs needed from his answer remain outstanding; that Respondent testified that the super comes, is unprepared, wastes his time; that he is left with shoddy work done only to find himself in the same situation all over again; that the super

[2] The Court annexes a copy of the VSR to this decision and incorporates it by reference hereto.

[3] A class "A" violation is "non-hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(1); class "B" violation is "hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(2); and a class "C" violation is "immediately hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(3). Notre Dame Leasing LLC v. Rosario, 2 N.Y.3d 459, 463 n.1 (2004).

attempted to do repairs in the subject premises; that he does not text or email them because he notifies them by phone; that he specifically did not want electronic communications with Petitioner, which was in the stipulation; that Petitioner and Petitioner's attorney emailed him anyway; that he does not recall if workers showed up on access dates; that the stipulation says that prior conditions had been corrected; and that at the time the conditions in the stipulation were the only ones that were outstanding.

Petitioner submitted into evidence an email from Respondent's attorney from 2018 seeking access dates on a Saturday and a Sunday and an order from DHCR dated January 8, 2020 in matter #HV-410161-S denying a complaint for a rent reduction for lack of access.

Respondent testified on cross-examination that he let Petitioner into the subject premises to do repairs without the intervention of the Court or DHCR; that he could not remember the date; and that the purpose of the access was so Petitioner could document the completion of repairs.

Petitioner submitted into evidence Respondent's harassment complaint with DHCR which included among instances of alleged harassment a complaint that Petitioner only could give access during regular business hours and a letter from DHCR dated February 25, 2020 acting on the harassment complaint in part with a notation that Respondent stated that he would only agree to access dates for extermination and wanted access dates to be performed on weekends and "felt that access is best scheduled with his attorney." The letter went on to say that it is not harassment to not do repairs on the weekend and denied Respondent's complaint.

Respondent testified on cross-examination that Petitioner sends letters requesting dates and then does not appear; that Petitioner did not comply with access dates from litigation; that he let Petitioner into the subject premises; that people came in and did shoddy work; that he thought

that it was harassment for workers to not speak English because he could not communicate with them; that Petitioner was not supposed to contact him by phone or text; that he did not say that no workers who cannot speak English could not be there; and that he does not know how to communicate with someone who cannot speak English.

Respondent testified on redirect examination that he provided access; that Petitioner has cameras pointed at his door; that they took long lunches; that even though he gave access, the work was of such poor quality that they remained as violations; that he provided access to workers who spoke Spanish but he had to call and get someone to translate; that it took twenty to thirty minutes for someone who spoke Spanish to get to subject premises; that he did not want Petitioner to communicate electronically with him to arrange access; that he never denied any workers who were there to address outstanding repairs on any basis; and that if there were agreed-upon dates to come in to do work they were granted access.

Naftali Leiner ("the Property Manager") testified that he is aware of the subject premises; that he is aware of violations at the subject premises; that he has no reason to not cure these violations; that he gains nothing by evicting Respondent because the subject premises is Rent-Stabilized; that he is trying to get access; that Respondent never gives him access; and that neither he nor his workers have been in the subject premises in two years.

The Property Manager testified that there has been a history of other people who had been trying to get access; that he knocked on the door a few times; that he came with an HPD inspector and could not get access; that "we" sent letters to Respondent, posted notes in the hallway; that they put letters under the door; that the super told Respondent; that he attempted to call to inspect and repair last year, meaning 2022; that he never spoke to Respondent; that his secretary called Respondent; that he himself never called; that he was sitting next to his secretary

when she called; that someone who works with him slipped letters under the door in 2022; that he was with this person once; that he did not write that letter; that he thinks that the letter gave Respondent two weeks to call the office; that he never saw Respondent; and that he would knock on the door without scheduling anything.

Jose Baez ("the Super") testified that he is the super at a building other than the Building; that there are no other supers; that he knows "Edgar" who is a super at a different building who works for the same management company; that he knows Respondent; that he has been in the subject premises; that Respondent has not let "Edgar" in; that he was told that Respondent did not want Edgar there so he was sent to the subject premises; that he performed the work in the Stipulation; and that he had a helper because he had two days to do the work.

Petitioner submitted into evidence photographs of the aftermath of work being done in the subject premises in 2018, depicting floors, walls, and ceilings that look like they had been repaired.

The Super testified that he is not aware of other violations in the subject premises; that he is willing to do the work; and that the property manager would schedule the work.

The Super testified on cross-examination that the last time he was in the subject premises was in 2018.

Discussion

A cause of action for nonpayment of rent sounds in breach of contract. Solow v. Wellner, 86 N.Y.2d 582, 589-90 (1995), Rutland Rd. Assoc., L.P. v. Grier, 2017 N.Y. Misc. LEXIS 1025 (App. Term 2nd, 11th, and 13th Dists. 2017), Fasal v. La Villa, 2 Misc.3d 137(A) (App. Term 1st Dept. 2004). In order to state a cause of action for breach of contract, a claimant

must prove damages resulting from the breach. 34-06 73, LLC v. Seneca Ins. Co., 39 N.Y.3d 44, 52 (2022).

Petitioner's proof of damages in this proceeding was its rent breakdown. The rent breakdown starts with a lump sum balance of $12,808.34 in August of 2020. The rent breakdown does not detail any charges or payments before that date. A claimant on a contract action fails to meet its burden of proving damages when the claimant does not detail or break down damages. GRKH, Inc. v. 3680 Props LLC, 179 A.D.3d 1177, 1179 (3rd Dept. 2020). Instructively, a predicate rent demand pursuant to RPAPL §711(2) does not support a nonpayment petition when the amount of arrears demanded is a lump sum, rather than broken out over the course of months. 320 Manhattan Avenue L.P. v. Koita, N.Y.L.J. June 30, 2010 at 26:1 (Civ. Ct. N.Y. Co.), Retail Prop. Tr. v. SHNS Corp., 28 Misc.3d 1217(A)(Dist. Ct. Nassau Co. 2010), St. James Court, LLC v. Booker, 176 Misc.2d 693 (Civ. Ct. Kings Co. 1998). If a lump sum fails to adequately apprise a tenant of the amount to be paid to avoid litigation, logically it cannot support a claim in a manner sufficient to enable a tenant to defend against the claim, particularly with defenses of the kind Respondent interposed herein, like payment and laches. Cf. 910 Riverside LLC v. Suero, 2018 N.Y.L.J. LEXIS 1741, *6 (Civ. Ct. N.Y. Co.)(where a rent breakdown does not show rents charged and received for a time period for which an overcharge counterclaim is sought, the Court cannot calculate the amount of the overcharge), BSP 1898 Belmont 1 LLC v. Dean, 59 Misc.3d 1220(A)(Civ. Ct. Bronx Co. 2018)(the absence of a breakdown of rent payments deprives the Court of the evidence needed to adjudicate a dismissal of a nonpayment petition or an amendment of a judgment to reflect impermissible charges).

The Court could conceivably consider Petitioner's cause of action for rent accruing after a lump sum. Two problems specific to this proceeding adhere to that course of action, however. The first problem is that the baseline lump sum figure, from August of 2020, post-dates the verification of the petition, in September of 2019. This shortcoming in Petitioner's breakdown deprives the Court the ability to both evaluate the merit of the petition and to determine whether the petition, or an amount of arrears that may be less than the judgment amount sought in the petition, has been satisfied.

The second problem is determining the amount of monthly rent. A party seeking relief on a contract bears the burden of proving at trial the specific facts entitling it to relief, Azoulay v. Cassin, 128 A.D.2d 660, 661 (2nd Dept. 1987), Roshodesh v. Plotch, 35 Misc.3d 1241(A)(S. Ct. Queens Co. 2012), 1045 Anderson Ave. HDFC v. Mack, 3 Misc.3d 1109(A)(Civ. Ct. Bronx Co. 2004), including, naturally, facts supporting a monetary award, J. R. Loftus, Inc. v. White, 85 N.Y.2d 874, 877 (1995), Crippen v. Adamao, 165 A.D.3d 1227, 1229 (2nd Dept. 2018), to a degree of "reasonable certainty." City of N.Y. v. State, 27 A.D.3d 1, 4 (1st Dept. 2005), Fishbein v. Mackay, 36 Misc.3d 1228(A)(Civ. Ct. N.Y. Co. 2012). The most recent lease in evidence expired about three years before the verification of the petition and four years before a detailed breakdown of rent arrears in evidence as of September of 2020. The Stipulation speaks of subsequent renewal leases, but no renewal lease is in the record.

A landlord may only obtain a judgment against a tenant for nonpayment of rent for a time period in which there is a lease in effect. 6 West 20th Street Tenants Corp. vs. Dezertov, 75 Misc.3d 135(A)(App Term 1st Dept. 2022), Fairfield Beach 9th LLC v. Shepard-Neely, 77 Misc.3d 136(A)(App. Term 2nd Dept. 2022). Respondent's status as a rent-stabilized tenant does not relieve Petitioner of proof of a meeting of the minds. "Rent [S]tabilization is a lease-based

regulatory scheme. As such, a tenant's obligation to pay the stabilized rent is dependent on the tenant's agreement to pay it." Pald Enters. v. Gonzalez, 173 Misc.2d 681, 682 (App. Term 2nd Dept. 1997). Petitioner has not proven a lease in effect for the entirety of the period post-dating the lump sum balance of August of 2020.

Respondent's apparent application for, and Petitioner's acceptance of, ERAP gives rise to a possible exception to the absence of a lease in the record as a basis according to which Petitioner could obtain a judgment, as the ERAP statute provides that a landlord's acceptance of benefits constitutes an agreement not to treat a tenant as a holdover or raise the rent for one year thereafter. L. 2021, c. 56, Part BB, Subpart A, §9(2)(d)(iv), as amended by L. 2021, c. 417, Part A, §5. See JSB Props. LLC v. Yershov, 77 Misc.3d 235, 241 (Civ. Ct. N.Y. Co. 2022). However, as noted above, the Office of Temporary and Disability Assistance ("OTDA") paid Petitioner $8,708.40 in ERAP funds in October of 2021. The record does not show what monthly rent this payment is based on, the source of any such monthly rent, or what months are covered by the payment. Significantly, the ERAP payment is greater than the petition. In any event, for this reason and the reasons stated above, Petitioner does not prove its prima facie case on this record.

A dismissal of the petition renders moot Respondent's defenses of payment, inadequate rent demand, and laches, and renders moot Respondent's application to amend his answer to include a TSHA defense. Respondent did not submit evidence to support his defense of rent overcharge. Indeed, as noted above, there is no evidence in the record that Petitioner has raised the rent at all in the four years leading up to the commencement of this proceeding, given that the most recent lease in evidence commenced more than four years before the commencement of this case by that time frame.

With regard to Respondent's defense and counterclaim of a breach of the warranty of habitability, rent reserved under a lease comprises the baseline for a rent abatement. Park West Management Corp. v. Mitchell, 47 N.Y.2d 316, 329, *cert. denied*, 444 U.S. 992 (1979), Elkman v. Southgate Owners Corp., 233 A.D.2d 104, 105 (1st Dept. 1996). Accordingly, an indispensable element of a cause of action for breach of the warranty of habitability is evidence of a rental amount. Burgos v. Harry Realty LLC, 38 Misc.3d 147(A)(App. Term 1st Dept. 2013). For the reasons stated above, the preponderance of evidence in the record does not show such an amount. Accordingly, the Court will dismiss Respondent's affirmative defenses and Respondent's counterclaims of rent overcharge and breach of the warranty of habitability.

Respondent also counterclaims for harassment. The only possible ground for harassment that has support in the record is a repeated failure to correct "B" and "C" violations. N.Y.C. Admin. Code §27-2004(a)(48)(b-2). However, the record contains letters from Respondent demanding that he only provide access on weekends, a demand that intuitively complicates a landlord's ability to correct violations even if the Court does not reach the issue of whether such a demand amounts to a denial of access. Moreover, Respondent's insistence that workers correcting violations speak English leads the Court to draw the inference that such a demand hindered Petitioner's ability to correct violations as well. Finally, while the definition of harassment according to the Rent Stabilization Code is not the same as the New York City Housing Maintenance Code, DHCR's denial of Respondent's harassment complaint there bears at least some weight. Accordingly, the preponderance of the evidence does not support a finding of harassment and the Court also dismisses Respondent's counterclaim as such.

Given that the record indeed shows extant violations of the New York City Housing Maintenance Code, Respondent does show cause for a judgment directing Petitioner to correct

violations. New York City Civil Court Act §110(c). Prior disputes over access have no relevance to such an order. See D'Agostino v. Forty-Three E. Equities Corp., 12 Misc.3d 486, 489-90 (Civ. Ct. N.Y. Co. 2006), *aff'd on other grounds*, 16 Misc.3d 59 (App. Term 1st Dept. 2007), Steinberg v. Parkash, 71 Misc.3d 1225(A)(Civ. Ct. Bronx Co. 2021) Morales v. 1160 Cromwell Crown Llc, 2021 N.Y. Slip Op. 50748(U)(Civ. Ct. Bronx Co.), Parrales v. 800 Realty LLC, 69 Misc.3d 1219(A)(Civ. Ct. Bronx Co. 2020), Beltre v. Carroll Place Assocs. LLC, 69 Misc.3d 1215(A)(Civ. Ct. Bronx Co. 2020), Morales v. Balsam, 69 Misc.3d 1204(A)(Civ. Ct. Bronx Co. 2020), Allen v. 219 24th St. LLC, 67 Misc.3d 1212(A)(Civ. Ct. N.Y. Co. 2020), Vargas v. 112 Suffolk St. Apt. Corp., 66 Misc.3d 1214(A)(Civ. Ct. N.Y. Co. 2020), Castillo v. Banner Grp. LLC, 63 Misc.3d 1235(A)(Civ. Ct. N.Y. Co. 2019).

Accordingly, it is

ORDERED that the Court dismisses the petition, and it is further

ORDERED that the Court denies Petitioner's motion to amend the petition, and it is further

ORDERED that the Court denies Respondent's motion to amend his answer to include a TSHA defense, and it is further

ORDERED that the Court dismisses Respondent's defenses of rent overcharge, breach of the warranty of habitability, harassment, laches, payment, and inadequate rent demand, and it is further

ORDERED that the Court dismisses Respondent's counterclaims of rent overcharge, breach of the warranty of habitability, and harassment, and it is further

ORDERED that the Court directs Petitioner to correct the Violations as follows: "C" violations on the first access date, "B" violations on or before June 12, 2023, and "A" violations

on or before August 9, 2023, with access to be arranged between counsel for the parties, and it is further

ORDERED that on default of this order to correct violations, Respondent may move for appropriate relief, including but not limited to civil penalties and/or contempt, without prejudice to Petitioner's defenses to such a motion should one be made.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated: May 11, 2023
New York, New York

HON. JACK STOLLER
J.H.C.